



**QORTI TAL-MAGISTRATI (MALTA)
BHALA QORTI TA' GUDIKATURA KRIMINALI**

**MAGISTRAT DR. JOSEPH MIFSUD
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**Il-Pulizija
(Spettur Daryl Borg)**

vs

Dr. Jason Azzopardi LL.D.

Seduta tad-Distrett Valletta

Illum 15 ta' April, 2016

Il-Qorti;

Rat l-imputazzjoni migjuba kontra l-imputat **Dr. Jason Azzopardi** detentur tal-karta tal-identita' bin-numru 143871M billi huwa akkuzat talli fl-24 ta' Gunju 2015 fil-Furjana u gewwa dawn il-Gzejjer waqt konferenza stampa minnu organizzata pubblikament, bil-hsieb li jtellef jew inaqqas il-gieh ta' Peter Paul Zammit L.P.; weggghu jew ingurjah bi kliem, b'gesti, b'kitba, b' disinji jew b'xi mod iehor u dan bi ksur tal-Artikolu 252 tal-Kapitolu 9 tal-Ligijiet ta' Malta.

Semghet il-provi inkluz ix-xhieda tal-imputat.

Rat l-atti kollha ta' dan il-procediment u d-dokumenti esebiti.

Semghet is-sottomissjonijiet finali maghmula mill-prosekuzzjoni u d-difiza.

Ikkunsidrat:

Il-Qorti tal-Magistrati ghandha kaz quddiemha li tittrattah bhal kull kaz iehor bhalu quddiemha, jigifieri min jallega li gie mmalafamat irid jipprova dan. Min-naha l-ohra, min jigi hekk akkuzat ghandu dritt illi jiddefendi ruhu - kollox kif tistabbilixxi l-ligi ghal kulhadd.

Din il-Qorti taghmilha cara li hija qatt ma harset lejn l-ucuh, la ta' min gie akkuzat quddiemha u daqstant iehor ta' min safa vittma, w dan ghaliex il-gustizzja m'ghandux ikollha ucuh.

Hawnhekk ghandna kaz ta' politiku li, dejjem skond il-ligi, il-Qorti tkun mieghu b'komma aktar wiesgha fil-liberta tal-kritika, kif ghandha tkun ma' kulhadd f'din il-pozizzjoni.

Ghandna wkoll eks-Kummissarju tal-Pulizija li, dejjem skond il-ligi applikabbli ghal kulhadd, hu suggett ghal skrutinju akbar minn cittadin normali. Dan dejjem fejn jidhol xogħlu permezz tal-kariga tieghu.

Xhieda

F'dawn il-proceduri xehdu tnax (12)-il xhud f'seduta li nzammet nhar l-Erbgha, 6 ta' April 2016: Saviour Cachia (*a fol. 6 et seq.*), Peter Paul Zammit (*a fol. 27 et seq.*), Saviour Balzan (*a fol. 40 et seq.*), Ray Libreri (*a fol. 81 et seq.*), Ivan Martin (*a fol. 86 et seq.*), Emanuel Grima (*a fol. 91 et seq.*), Daniela Meli (*a fol. 98 et seq.*), l-Ispettur Daryl Borg (*a fol. 102 et seq.*), l-Onor Dr. Jason Azzopardi (*a fol. 107 et seq.*), John Rizzo (*a fol. 127 et*

seq.), l-Ispettur Elton Taliana (*a fol. 132 et seq.*) u l-Assistent Kummissarju Neville Aquilina (*a fol. 140 et seq.*).

Din il-Qorti hija f'pozizzjoni vantaggjuza meta tigi biex taghmel apprezzament tax-xhieda, u dan ghalix ghexet il-process u ghalhekk hija f'pozizzjoni, wara li semghet ix-xhieda kollha jixhdu viva voce quddiemha, li tezamina l-imgieba u l-komportament taghhom, stante li kienet hi stess li kkonstatat x'interess seta' kellu xi xhud u jekk dak li qal kellux mis-sewwa jew le.

Il-fatti marbuta mal-kaz

Fit-2 ta' Marzu 2015 waqt li kien qiegħed jixhed quddiem il-Qorti tal-Magistrati f'kawza ta' libel li fetah l-Ispettur Elton Taliana, d-Direttur tal-*media house*, *Media Today* s-Sur Saviour Balzan iproduca pagni b'minuti u komunikazzjoni interna bejn ufficjali tal-pulizija mid-*dossier* personali tal-Ispettur Taliana li ghandhom il-Korp tal-Pulizija sabiex jissustanza rapport li kien ixxandar fil-21 ta' Awwissu 2013.

L-Ispettur Elton Taliana hassu aggravat b'dan u permezz tal-avukat Dr Joe Zammit Maempel fl-10 ta' Marzu 2015 kiteb lill-*Information and Data Protection Commissioner* fejn ipprezenta ilment kontra l-Kummissarju tal-Pulizija bhala d-*data controller* tal-Korp tal-Pulizija.

L-*Information and Data Protection Commissioner* investiga l-ilment u sab li:

"The disclosure, by the data controller, of Inspector Taliana's personal data contained in his dossier, certainly did not satisfy any of the legal criteria established under article 9 of the Act. This action breaches the complainant's data protection rights as contemplated under the Act and consequently constitutes a violation of the provisions of the same Act." (a fol. 23).

Fit-18 ta' Gunju, 2015 id-*data controller* tal-Korp tal-Pulizija kien obligat li jhallas multa amministrattiva ta' hames mitt Euro (€500).

Fil-gurnal *Times of Malta* nhar l-Erbgha 24 ta' Gunju, 2015 kien ippubblikat artikolu fil-faccata dwar id-decizjoni tal-*Information and Data Protection Commissioner* bit-titlu **Former chief of police copied records illegally** b'ritratt ta' Peter Paul Zammit.

Dakinhar stess l-Onor. Dr Jason Azzopardi ta konferenza tal-ahbarijiet fil-Floriana quddiem l-ufficju tat-*task force* ta-CHOGM fejn kien jahdem Peter Paul Zammit wara li spicca minn Kummissarju tal-Pulizija dwar dak li kienet irrapurtat it-*Times of Malta* filghodu fejn appella lill-Prim Ministru jkecci lil ex-Kummissarju tal-Pulizija in vista tar-rapport tal-*Information and Data Protection Commissioner* fejn immulta lill-Kummissarju tal-Pulizija hames mitt Euro (€500). Dr Azzopardi stqarr hekk:

Wara l-ahbar zvelata illum fl-ewwel faccata ta' *The Times* li qieghda tirrapporta decizjoni ta' ftit granet ilu li ha d-*Data Commissioner* li sab hati l-ex Kummissarju tal-Pulizija Pietru Pawl Zammit illi abbuzivament, illegalment kiser id-dritt tal-*privacy* ta' persuna Spettur tal-pulizija biex ihammeg dik il-persuna u allura huwa ksur tal-ligi, wara din id-decizjoni li ha d-*Data Commissioner* bla precedent, *unprecedented*, il-Prim Ministru ghandu minnufih ikecci mill-kariga pubblika li qed jokkupa Peter Paul Zammit. Dan huwa kaz ta' spjunagg istituzzjonalizzat. Pietru Pawl Zammit m'huwix strangier ghall-kontroversja. Pietru Pawl Zammit *at best*, fl-ahjar ipotesi, huwa *a source of huge embarrassment* ghall-gvern. Pero' *worst case* huwa *source*, huwa periklu gravi, huwa theddida serja ghas-serhan tal-mohh ta' cittadini partikolarment ghad-dritt tal-privatezza tal-persuna. F'pajjiz fejn suppost il-gvern jiftahar, jghid li huwa l-pampalun tal-libertajiet civili, li l-gebla tax-xewka, l-ghezez mid-drittijiet civili, mil-libertajiet civili hija d-dritt tal-privatezza, issa ghandna l-konferma, decizjoni, ta' istituzzjoni bil-

miktub, gie mmultat hames mitt Euro. Jigifieri hames darbiet il-*minimum* li seta' jehel ghaliex bil-hazen, b'mod mahsub, b'mod premeditat kiser id-dritt tal-privatezza ta' Spettur tal-pulizija. Kien min kien, seta' kien min kien. Il-punt hu li inkiser id-dritt tal-privatezza b'abbuz ta' poter mill-Kummissarju li qieghed hemm biex ihares il-ligi. Il-Kummissarju tal-Pulizija, *the Police in Chief*, li xogholu hu li jara li ma tinkisirx il-ligi u li jiehu passi kontra min tinkiser il-ligi, hu stess klandestinament, abbuzivament, illegalment ghadda materjal mill-*personal file* ta' membru tal-Korp tal-Pulizija biex ihammeg dak il-persuna. Xi haga li f'mitejn sena tal-Korp tal-Pulizija qatt ma grat. (*a fol. 277 sa 278*).

Irrizulta li t-titlu tat-*Times of Malta* ma kienx korrett u ma rrizultax mir-rapport tal-*Information and Data Protection Commissioner* li l-ex Kummissarju kien il-persuna li llegalment ikkopja r-*record* mid-*dossier* tal-Ispettur Elton Taliana.

L-ghada tal-konferenza tal-ahbarijiet nhar il-Hamis, 25 ta' Gunju, 2015, it-*Times of Malta* ppubblikat kjarifika fejn qalet li:

"Times of Malta yesterday incorrectly stated in a front-page heading that former police commissioner Peter Paul Zammit had illegally taken a copy of the personal file of Inspector Elton Taliana, when an inquiry by the Data Protection Commissioner investigation made no reference to the identity of the individual who copied the inspector's records.

As a result of the inquiry, the Data Protection Commissioner fined the current Police Commissioner €500 after Mr Taliana's file was illegally copied and passed on to Malta Today while it was in the possession of Mr Zammit, who at the time was police commissioner.

The fine was imposed on the current Police Commissioner, Michael Cassar, but the report makes it clear the offence happened under the watch of former police commissioner Peter Paul Zammit.

However, the newspaper's heading 'Former chief of police copied records illegally', was incorrect and we apologise unreservedly."

Fil-21 ta' Dicembru 2015 Peter Paul Zammit baghat kwerela biex il-pulizija *"tipprocedi kriminalment kontra Dr. Jason Azzopardi LLD, talli fil-24 ta' Gunju 2015, fil-Furjana, waqt konferenza stampa minnu organizzata pubblikament bil-hsieb li jtellef jew inaqas il-gieh tieghi, ingurjani bi kliemu billi falsament allega li meta jien kont nokkupa l-kariga ta' Kummissarju tal-Pulizija, ghaddejt kopji tal-kontenut ta' file ta' Elton Taliana lil Saviour Balzan."*

Tentattiv ghal ftehim bonarju

Mill-atti ta' din il-kawza jirrizulta li wara li kienet ipprezentata l-kwerela sar tentattiv bejn il-partijiet sabiex jintlahaq ftehim (*a fol. 36 et seq.*).

Nhar is-Sibt 20 ta' Frar f'1:50 PM l-imputat baghat *email* lill-kwerelant fejn qallu:

"This is the clarification I am ready to publish, as agreed during our meeting earlier this week. I will await your acceptance so that I will proceed to publish."

Id-dikjarazzjoni mehmuzza mal-*email* tghid hekk:

With reference to my declaration during a press conference organised by the PN on the 24th June 2015 (to check date) that it must have been former Commissioner of Police Peter Paul Zammit who had illegally taken a copy of the personal file of Inspector Elton Taliana, I forward the following clarification:

1. *The Data Protection Commissioner investigation, concluded in June 2015 and the subject matter of the said press conference, made no reference to the identity of the individual who copied the Inspector's records. The issue of evidence about the person who actually committed the unauthorised disclosure did not arise given that the ultimate responsibility is assumed by the data controller.*
2. *The same investigation makes it clear the offence happened under the watch of former Police Commissioner Mr Zammit;*
3. *The same Data Commissioner decided in June 2015 that "the Sergeant Major was in a position to confirm from memory that, in the period between July and August 2013, the personal dossier of Inspector Taliana was requested by the former Commissioner of Police responsible at that period. The dossier was not returned to the HR section until that former Commissioner of Police tendered his resignation from his position, and the file was traced together with other pending matter, in a room adjacent to the office of the Commissioner of Police".*
4. *The same Data Commissioner decided in June 2015 that "having established that the personal dossier of Inspector Taliana was last requested by the former Commissioner of Police in the period between July and August 2013".*

Dakinhar stess il-kwerelant kiteb lura lill-imputat f'5:51 PM:

"Nahseb li ma ftehmniex. Il-fatti li esponenti int fil-press conference tieghek kienu zbaljati, u dwar dan ma hawn ebda apologija f'dan li baghtli, insib biss dak li qal il-Kummissarju tal-Protezzjoni tad-Data. Jew inkunu serji u nitolbu skuza, altrimenti tahlilix hin, ghax wara kollox l-irgulija hekk titlob, u sa fejn naf jien din kienet id-direzzjoni tas-Segretarja tal-Partit Nazzjonalista. Nahseb stajt taghmel hafna ahjar."

L-imputat fis-6:04 PM wiegbu lura:

“Jien ktibt in good faith dak li tkellemna fuqu. Int xtaqt xi haga fuq il-linja li kitbu t-Times l-ghada u hekk ghamilt ... fil-fatt l-ewwel paragrafu jirrifletti car hafna dak li qalu t-Times l-ghada u l-kumplament dak li d-Data Commissioner kiteb lilek wara li int tlabt spjega/precizzjoni minghandu (dik li int ktibt lil Rosette). Hu car hafna li fl-ewwel paragrafu qed nghid li m’hemm ebda referenza ghal isem Peter Paul Zammit, anzi nahseb cara hafna. Sincerament mhux nijhem. Pero jekk hemm xi haga partikolari li inti tixtieq li tkun inkluzja jew mizjuda, hossok liberu li tiktibhieli. Nistenna minghandek.”

Il-kwerelant wiegeb lill-imputat fit-23 ta’ Frar 2016 fid-9:23 PM:

“Jekk tara din il-bicca clip, taghraf xi rridek tinnega, jew tal-inqas tiskuza ruhhek, fejn minn dak kollu li int ghedt hawn fuq ma hemm ebda skuza da parti tieghek tal-izball ‘iswed fuq l-abjad’ kif minnek allegata ...

Din l-istorja, kif voluta li tkun pubblika, ghandha tkun pubblika anke fil-konkluzjoni li kien hemm zball u ghaldaqstant kif qalet is-Segretarja, ghandu jkun hemm skuza.”

Fid 19 ta’ Marzu 2016 fl-10:44 AM il-kwerelant kiteb lill-imputat:

“Din hija [Quoted text hidden]¹”

Ghaxart’ijjem wara fid-29 ta’ Marzu 2016 fis-6:10 PM l-imputat kiteb lil kwerelant:

¹ Fid-dokument esebit f’ dawn l-atti u mmarkat bhala Dok PPZ 3. M’hemmx x’jikkonsisti [Quoted text hidden]

“Il-kumplament tal-Ghid it-Tajjeb qabel xejn. Skuzani li domt ma wegibt imma dejjem biex inwiegeb u dejjem jara x’jinqala’. Ikolli, wara perjodu ta’ riflessjoni u studju, intenni dak li kont ktibtlek ftit gimghat ilu u li sfortunatament ma kienx ta’ sodisfazzjoni ghalik. Sliem u sahha. [Quoted text hidden]”

F’dan il-kaz falliet il-politika tal-perswazzjoni. Il-Qorti tfakkar xi stqarr il-Prof. Gwido De Marco³ dwar dan:

M’iniex xi guru fil-psikologija tal-perswazzjoni, sadattant, umilment, inhoss li nista’ nghid li pprattikajt il-politika ta’ perswazzjoni tul il-karriera politika kollha tieghi. It-terminu “politika ta’ perswazzjoni” ghandu ghadd ta’ forom ta’ perswazzjoni, meta ghaziltu bhala titolu ghal din il-gabra ta’ tifikiriet, ma kellix f’modhi xi teknika gdida ta’ perswazzjoni, bhal nghidu ahna, il-politika tal-glorja, inqas u inqas dik, hekk maghrufa, bhala perswazzjoni forzata, manipulazzjoni jew indottrinazzjoni. It-titolu li ghazilt ghandu jfisser, iggib ghal mieghek lil min jopponik, jew li taqsam jew taqbel mal-opinjoni ta’ haddiehor, jew li tasal fi ftehim bla tilwim, minghajr vjolenza verbali jew fizika.

Nhar l-Erbgha 6 ta’ April 2016 nqrat l-akkuza fil-konfront tal-imputat, instemghu x-xiehda kollha u saru s-sottomissjonijiet finali wara li ma ntlahaqx ftehim bonarju.

Il-kwerelant **Peter Paul Zammit** (a fol. 27 et seq.) spjega x’wasslu biex jibda dawn il-proceduri wara sitt (6) xhur mill-Konferenza tal-Ahbarijiet moghtija fil-24 ta’ Gunju 2015:

Ftit wara gejt infurmat illi din kienet tirrigwarda lili u rapport tat-*data protection* li mid-dehra kien deher dakinhar stess fit-*Times*. Jiena rajt x’kien hemm fuq il-portal tat-*Times*, qrajt dak li kien hemm, kien hemm *link* ghal dan ir-rapport illi jien sa dak il-hin kien ghadni ma nafx li jezisti u li sar. Rajt illi kien hemm nuqqasijiet bejn dak li jghid ir-rapport u dak li kien

² Ibid.

³ **Il-Politika tal-Perswazzjoni**, Allied Publications, 2009. Introduzzjoni

hemm fl-ewwel faccata tat-*Times* illi attribwietu direttament lili. Nghid il-verità bilkemm ilhaqt lestejt naqra l-fatti li ma kellix telefonata mill-editur tal-istess gazzetta fejn skuzaw ruhhom ghall-izball illi huma ghamlu u minn hemm u minn hawn -

Qorti: Min kien l-editur jekk joghgbok?

Xhud: Ariadne Massa. Minn hemm u minn hawn bdew jiddiskutu bejniethom sabiex jikkoregu dak l-izball. Talbuni skuza. Ghidtilhom, "l-aqwa li ssir il-korrezzjoni." Jiena *as far as I am concerned* is-sitwazzjoni *more or less* waqfet hemm, sakemm ovvjament ma nsibx il-*media* kollha sploduta bis-sitwazzjoni, u nghid "sploduta" ghax anke fuq l-*internet* kienet harget u ghadha *available* sal-lum, illi l-allegazzjoni tal-Onorevoli Dottor Jason Azzopardi illi kont jiena illi kxift dawn id-dokumentazzjonijiet. Jiena bqajt ninsisti, tlabt kjarifika kif fil-fatt ikkonferma minghand id-*Data Protection Commissioner* dwar dan il-punt partikolari. Ghal ragunijiet ovvji nghatat ir-risposta illi ma kien hemm xejn x'jindika illi jiena kont il-persuna kif gejt allegat illi ghamilt il-fotokopji u li tajt il-*file* lil Saviour Balzan, xi haga illi nichadha kategorikament illi qatt ghamiltha b'mod dirett jew b'xi mod indirett. Il-parti l-kbira tal-*media* ghamlu l-korrezzjonijiet necessarji u nghidha kjarament illi anke kelli diskussjoni *tramite emails* ma' Daphne Caruana Galizia li tellghet l-istess *portal* u ikkoregietha immedjatament wara mal-mument illi kellha l-fatti quddiemha u s-sitwazzjoni *more or less* bdiet tikkoregi ruhha. In segwitu sirt naf illi waqt xi attività tal-Partit Nazzjonalista Rosette Thake giet mistoqsija x'se taghmel dwar dan il-punt. Hija irrispondiet illi jekk sar zball lesti li jitolbu skuza. Hadt l-ispunt minn hemm u ktibt lil Rosette Thake fil-kapacità taghha ta' segretarja tal-Partit Nazzjonalista. Bqajt bla risposta. Dan kien f'Dicembru, fil-bidu ta' Dicembru 2015, sal-21 ta' Dicembru ma smajt assolutament xejn, allura ghidt ma jridux jirrangaw l-affarijiet u bghatt il-kwerela, ben konsapevoli illi jekk irid u meta jrid jiena l-kwerela nista' nirtiraha. Ghadda z-zmien, ma sar xejn. Icekkjajt mal-ghassa tal-Belt x'gara mill-kaz tieghi, qaluli qed jinhadem. Ftit jien wara nircievi sms minghand Rosette Thake sabiex incemplilha. Kien filghodu mal-hin tal-Qorti. Iktar tard cempilt, qaltli, "ghax Dottor Jason Azzopardi jixtieq jtkellem mieghi." Ghidtilha, "jiena dejjem il-Qorti, mhix problema, xhin irid javvicinani." Minn hemm u minn hawn iltqajna, iddiskutejna. Kien hemm ftehim illi ssir apologija bil-mod li juri illi kien hemm nuqqas ta' ftehim fic-cirkostanzi partikolari. Intbaghtet forma ta' apologija.

L-imputat **Dr. Jason Azzopardi** (a fol. 107 et seq.) waqt ix-xiehda tieghu f' dawn il-proceduri ddikjara:

Assolutament jiena ma kelli l-ebda, la dakinhar, u lanqas wara, jiena qatt ma kelli mhux biss fil-konfront tas-Sur Zammit, fil-konfront ta' hadd, li meta nikkritika jiena nifhem *as long as* li qed nikkritika r-rwol pubbliku, u dak iz-zmien kien qiegħed jikkupa rwol pubbliku, u d-decizjoni nghatat minhabba rwol pubbliku iehor li kellu, hemmhekk mhux qed innaqqas il-gieħ jew ir-rispett dovut fil-konfront ta' persuna illi kull wieħed u wahda minna għandu juri f'socjetà civilizzata.

[...]

Le dizgwid personali zgur li le. Nerga' nghidlek, nerga' nghidlek, fi Frar meta ltaqajna nikkonferma kellna laqgħa kordjali fejn jiena smajtu u hu semgħani, u mhux se nghid hawnhekk tkellimna fuq affarijiet illi jmorru lil hinn mis-suggett illi għandna tal-*press conference*, imma nikkonferma li kienet laqgħa kordjali għax jiena qatt ma nattakka l-persuna, u dejjem inzomm rispett lejn il-persuna. Però meta kont *shadow minister* tal-intern u s-Sur Zammit kien jikkupa l-kariga tal-Kummissarju tal-Pulizija, ma hemmx għalfejn noqgħod nidhol hawnhekk, kien hemm mhux darba u tnejn fejn l-Oppozizzjoni permezz tiegħi kkritikat l-operat tal-pulizija. Però ma jffisirx illi għandi xi animu lejħ. Assolutament. Ma tarax!

[...]

Le, la kelli raguni, u qatt ma kienet xi hsieb tiegħi, nerga' nghid, il-*punto di partenza*, kont qed nikkritika l-operat, qed nikkritika bhala Oppozizzjoni għandna persuna li qed tokkupa kariga ta' ko-ordinatur tas-Sigurtà tal-Avvenimenti. Issa sirna nafu li kien hemm *a major breach* meta huwa kien Kummissarju tal-Pulizija u allura *it is only natural to question whether he is up to the job* li kien qiegħed jikkupa. Dak li konna qegħdin naghmlu u li jien għamilt fl-erbgha u ghoxrin (24) ta' Gunju.

Il-kwerelant mistoqsi minn din il-Qorti x' qiegħed jistenna minn dawn il-proceduri qal:

Peter Paul Zammit: le, għall-korrettezza.

Qorti: Imma xi tridu? Prigunerija zgur ma tridunx nibaghtu, hux hekk?

Peter Paul Zammit: Definitivament li le.

Qorti: Anke jekk jinstab hati.

Peter Paul Zammit: Anke jekk. U lanqas il-multa. Jiena l-kwistjoni, jekk il-Qorti tippronunzja ruhha fuq htija li kien hemm nuqqas, dak ghalija huwa bizzejjed.

Qorti: Jigifieri int m'intx interessat fil-multa u lanqas fil-prigunerija.

Peter Paul Zammit: Le. Qatt ma kien.

KUNSIDERAZZJONIJIET TAL-QORTI

Il-media

Illi l-opinjoni pubblika hija importanti hafna sabiex ikun hemm demokrazija shiha f'pajjiz. F'pajjizna m'ghandniex Qrati tal-poplu li jiddeciedu l-kawzi fi Triq ir-Repubblika, fuq iz-zuntier tal-knisja jew fil-hwienet tal-merca. Ghandna Qrati li dejjem kienu t-tarka tad-drittijiet ta' dawk kollha li ressqu quddiemhom sabiex titwettaq gustizzja.

Illi tajjeb li gudikant meta jkun qieghed jiddeciedi jiehu kont tal-impatt tar-reat fuq is-socjeta' u tar-reazzjoni tas-socjeta' ghal dak it-tip ta' reat izda l-gudikant mhux qieghed hemm sabiex jissodisfa l-ghajta ta' dawk li, ma' kull sentenza, tarahom jiktbu fil-gazzetti jew f'xi *blog* fuq l-*internet* sabiex jikkritikaw kollox u bl-addocc ghax minghalihom li saru issa esperti anke fil-ligi u fil-mod kif is-sentenzi ghandhom jigu finalment decizi.

Illi l-Qorti nnutat li f'dan il-kaz kien hemm min zvija l-opinjoni pubblika meta ta l-impresjoni li quddiem din il-Qorti kien hawn kawza ta' Libell Kriminali (liema kawzi ma jinstemghux minn din il-Qorti) meta kienet kawza ta' ingurja (*defamation*) fis-seduta tad-Distrett tal-Belt. Il-Qorti tinnota kif inkitbu artikoli u anke editorjali, inkluz dikjarazzjonijiet lil hinn minn xtutna dwar il-kaz izda hadd ma jidher li vverifika x'akkuza tassew inharget kontra l-imputat. L-akkuza quddiem din il-Qorti hi

dwar ksur ta' artikolu partikolari tal-Kodici Kriminali (Kap 9) u mhux xi artikolu tal-Ligi dwar l-Istampa (Kap 248).

Din il-Qorti fil-kawza l-**Pulizija vs Mario Degiorgio**⁴ ghamlitha cara x'inhi l-opinjoni taghha dwar il-Libell Kriminali u mhux se terga' tirrepeti dak li qalet. Sallum il-proposta hi li jitnehha l-Libell Kriminali mil-Ligi tal-Istampa izda m'hawnx proposta sa fejn taf il-Qorti li jitnehha l-Artikolu 252 tal-Kap 9 (Kodici Kriminali).

Il-Qorti tinnota dak li qal Lord Diplock fil-kaz **Horrocks v. Lowe**⁵ li:

"In ordinary life it is rare indeed for people to form their beliefs by a process of logical deduction from facts ascertained by a rigorous search for all available evidence and a judicious assessment of its probative value. In greater or in less degree according to their temperaments, their training, their intelligence, they are swayed by prejudice, rely on intuition instead of reasoning, leap to conclusions on inadequate evidence and fail to recognise the cogency of material which might cast doubt on the validity of the conclusions they reach."

Il-Prim Imhalef Emeritus Vincent Degaetano fis-sentenza **Pulizija v. Maurice Agius** jikkwota lil Lord Justice Lawton fil-kawza **R v. Sargeant**⁶ dwar dan:

"Society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass. The courts do not have to reflect public opinion. On the other hand they must disregard it. Perhaps the main duty of the court is to lead public opinion (enfasi ta' din il-Qorti).

⁴ Kaz Numru: 98/2013 deciza fit-2 ta' Dicembru 2015

⁵ Horrocks v. Lowe [1975] A.C. 135, 149

⁶ R v. Sargeant (1974) 60 Cr. App. R. 74

Id-dritt għall-espressjoni hielsa tal-kelma

Il-Qorti Ewropea tad-Drittijiet tal-Bniedem hija tarka tad-dritt tal-espressjoni tal-kelma u kien għaqli l-legislatur Malti li minbarra li dan il-kuncett kien introdott sa minn kmieni fil-Kostituzzjonijiet taghna haseb biex il-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem tkun ukoll inkorporata fil-ligijiet taghna. B'hekk ic-cittadin Malti huwa protett kemm mill-Kostituzzjoni imma wkoll b'din il-Konvenzjoni. L-Istituzzjoni tal-Gustizzja f'pajizna ddefendiet dawn id-drittijiet anke bil-gwida ta' dak li jigri barra minn xtutna.

Dak deciz fil-Qorti Ewropea tad-Drittijiet tal-Bniedem jgħabbi b'responsabbilta' lill-gudikant Malti għaliex d-decizjoni tieghu tista' tkun skrutinizzata jekk il-kaz wara li jkun ezawriti r-rimedji kollha f'Malta jittiehed fil-Qorti Ewropea tad-Drittijiet tal-Bniedem mill-persuna li thoss li f'pajizna ma nghatax *fair deal* fil-qorti taghna.

Artikolu 10 tal-Konvenzjoni Ewropea tad-Drittijiet tal-Bniedem jipprovdi li:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

Artikolu 19 tal-*International Covenant on Civil and Political Rights* (ICCPR) jghid li:

1. *Everyone shall have the right to hold opinions without interference.*
2. *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.*
3. *The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:*
 - (a) *For respect of the rights or reputations of others;*
 - (b) *For the protection of national security or of public order, or of public health or morals.*

Il-Qorti Ewropea tad-Drittijiet tal-Bniedem tipprovdi li l-Espressjoni Hielsa tal-Kelma tikkostitwixxi wiehed mill-pilastri ewlenin ta' socjeta' demokratika:

*"Freedom of expression constitutes one of the essential foundations of [a democratic] society, one of the basic conditions for its progress and for the development of every man ... it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society."*⁷

Il-Qorti Ewropea tad-Drittijiet tal-Bniedem fil-kaz *L. De Haes and H. Gijssels v. Belgium*⁸ qalet li:

⁷ *Handyside v. United Kingdom*, 7 December 1976, Application No. 5493/72, para. 49.

⁸ Appl. No. 19983/92, report of 29 November 1995, para. 63

“... the general interest in a public debate which has a serious purpose outweighs the legitimate aim of protecting the reputation of others, even if such debate involves the use of wounding or offensive language.”

Fil-kaz **Barford v Denmark**⁹ intqal li:

“the great importance of not discouraging members of the public, for fear of criminal or other sanctions, from voicing their opinions on issues of public concern.”

Fil-kaz **Ozgur Gundem v Turkey**¹⁰ kien sostnut li:

“genuine, effective exercise of this freedom does not depend merely on the State’s duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals. In determining whether or not a positive obligation exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual”

Fil-kaz **Stoll v. Switzerland**¹¹ intqal li:

“press freedom assumes even greater importance in circumstances in which State activities and decisions escape democratic or judicial scrutiny on account of their confidential or secret nature. The conviction of a journalist for disclosing information considered to be confidential or secret may discourage those working in the media from informing the public on matters of public interest. As a result the press may no longer be able to play its vital role as “public watchdog” and

⁹ 22 February 1989, *Series A No. 149*, para. 29

¹⁰ 16 March 2000, *Reports 2000-III*, para. 43

¹¹ ECtHR Grand Chamber 10 December 2007, Case No. 69698/01, **Stoll v. Switzerland**. Il-Qorti rat ukoll ECtHR Grand Chamber 27 March 1996, Case No. 17488/90, **Goodwin v. UK** u ECtHR Grand Chamber 21 January 1999, Case No. 29183/95, **Fressoz and Roire v. France**.

the ability of the press to provide accurate and reliable information may be adversely affected."

Is-sinifikat li ghandha f'demokrazija l-Espressjoni Hielsa tal-Kelma kienet spjegata mill-***Inter-American Court of Human Rights***:

Freedom of expression is a cornerstone upon which the very existence of a democratic society rests. It is indispensable for the formation of public opinion. It is also a condition sine qua non for the development of political parties, trade union, scientific and cultural societies and, in general, those who wish to influence the public. It represents, in short, the means that enable the community, when exercising its opinions, to be sufficiently informed. Consequently, it can be said that a society that is not well informed is not a society that is truly free.¹²

Meta l-Qorti hi rinfaccjata b'sitwazzjoni fejn trid tohloq bilanc bejn interessi varji bhal f'dan il-kaz il-protezzjoni tal-Dritt tal-Espressjoni tal-Kelma u l-protezzjoni tar-reputazzjoni tal-inividwu trid:

When faced with a conflict between competing rights and interests, courts usually favour a judicial approach where the relevant rights and interests are "harmonized" with due regard to the particular circumstances of each case. Such ad hoc balancing is more an artistic exercise than a scientific one as the circumstances of each case will ultimately determine which norm shall prevail.¹³

¹² *Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts 13 and 29 American Convention on Human Rights)*, Advisory Opinion OC-5/85, 13 November 1985, Series A, No 5, para 70.

¹³ Laurent Pech, *Balancing Freedom of the Press with Competing Rights and Interests, A Comparative Perspective*, 2006, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=909507

L-espert dwar il-Media **Kevin Boyle** kiteb:

*“to point out that there are circumstances in which other interests shall prevail over freedom of expression is not inconsistent with a strong commitment to the value of freedom of expression”.*¹⁴

Fil-kaz **Campbell v MGN** l-Baronessa Hale tispjega dwar it-tipi differenti ta' diskors:

*“There are undoubtedly different types of speech, just as there are different types of information, some of which are more deserving of protection in a democratic society than others. Top of the list is political speech. The free exchange of information and ideas on matters relevant to the organisation of the economic, social and political life of the country is crucial to any democracy. Without this, it can scarcely be called a democracy at all. This includes revealing information about public figures, especially those in elective office, which would otherwise be private but is relevant to their participation in public life.”*¹⁵

Lord Justice Stephenson fil-kaz **Lion Laboratories v Evans**¹⁶ fisser l-interess tal-pubbliku li jkun infurmat fuq materja ta' certu thassib:

- “1. There is a wide difference between what is interesting to the public and what it is in the public interest to make known.*
- 2. The media have a private interest of their own in publishing what appeals to the public and may increase the circulation or the numbers of their viewers or listeners and as a result they are ‘particularly vulnerable to the error of confusing the public interest with their own interest.’*
- 3. The public interest may be best served by an informer giving information not to the press but to the police or other responsible body.*

¹⁴ Kevin Boyle, “Overview of a Dilemma: Censorship versus Racism”, in S Coliver, K Boyle and F D’Souza, *Striking A Balance: Hate Speech, Freedom of Expression and Non-discrimination* above at note 7 at 1.

¹⁵ *Campbell v MGN* [2004] UKHI. 22, at para. 148

¹⁶ *Lion Laboratories v Evans* [1984] 2 All E.R. 417

4. *It is in the public interest to disclose grave misconduct or wrongdoing or to put it another way there is no confidence 'as to the disclosure of iniquity.'*¹⁷

Wendell Holmes J fis-sentenza **Abrams v United States**¹⁸ qal:

*"... the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out ... we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country."*¹⁹

Lord Nicholls fil-kaz **Albert Cheng v Tse Wai Chun Pauk**²⁰ jghid li:

"The public interest in freedom to make comments within these limits is of a particular importance in the social and political fields. Professor Fleming stated the matter thus in his invaluable book on The Law of Torts, 9th edition, p. 648: '... untrammelled discussion of public affairs and of those participating in them is a basic safeguard against irresponsible political power. The unfettered preservation of the right of fair comment is, therefore, one of the foundations supporting our standards of personal liberty.'"

¹⁷ Ibid. at p.423

¹⁸ Abrams v United States [1919] USSC 2.

¹⁹ Ibid. Dissenting judgement

²⁰ Albert Cheng v Tse Wai Chun Pauk [2000] HKCFA 88

Fil-kaz **London Artists Ltd. v. Littler**²¹ Lord Denning qal li:

“Whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on; or what may happen to them or others; then it is a matter of public interest on which everyone is entitled to make fair comment.”

Il-protezzjoni tal-espressjoni hielsa tal-Membru Parlamentari

Fil-ktieb **La Diffamazione Mediatica**²² li jitratta *I Grandi Orientamenti della Corte di Cassazione* jiddedika kapitolu shih dwar ir-rwol tal-membru parlamentari lil hinn mill-Kamra tar-Rapprezentanti bit-tema **I loughi e I modi della diffamazione istituzionale**.

Dwar id-dibattitu u l-bilanc li jrid jinholoq fil-hidma tar-rapprezentant elett fost dawk li jelegguh meta jargumentaw dwar temi ta' interess pubbliku jinghad:

Il problema, naturalmente, consiste nell'individuare i confini e nello stabilire i limiti entro i quali la descritta attivita' politico-parlamentare possa comprimere la tutela dell'onore e della reputazione dell'agredito. In particolare il quesito si e' posto per l'attivita' che il deputato o il senator esercita fuori dal perimetro dei palazzi parlamentari, attingendo frequentemente, con le sue dichiarazioni, anche soggetti non direttamente (e professionalmente) impegnati sul piano politico.

[...]

La comunicazione politica ha assunto modalita' ben differenti rispetto a quelle che hanno caratterizzata in passato: essa si svolge (fisicamente) anche al di fuori delle sede istituzionali, si e mediatizzata, si e' estesa e frammentata. Cio', per altro, deve ritenersi perfettamente coerente con

²¹ London Artists Ltd. v. Littler [1969] 2 Q.B. 375, 391

²² UTET Giuridica, Wolters Kluwer Italia S.r.l. [2012], pg. 269-298

lo spirito della Costituzione repubblicana, atteso che, “proiettarsi al di fuori delle aule (...) nell’interesse della liberta dialettica politica, che e’ condizione di vita delle [stesse] istituzioni democratico-rappresentative.”²³

[...]

*Proprio il ruolo di rappresentanti, faculta i parlamentari ... a sindacare l’operato, non solo dei “colleghi”, ma – se cio’ appare funzionale allo svolgimento del mandato ricevuto dagli elettori – di qualsiasi consociato, e, come e’ ovvio, li legittima a coltivare il rapporto con il corpo elettorale, portando anche **extra moenia** i contenuti della polemica intraparlamentare.*

[...]

*Da tempo, pertanto, la giurisprudenza (costituzionale innanzitutto) si e’ spesa per individuare il “nesso funzionale” che, legando l’attivita’ svolta, appunto, **intra moenia** alla sua proiezione esterna, valga a giustificare la tutela (c.d. “avanzata”) della funzione parlamentare, vale a dire la possibilita’ per il senatore o il deputato di “esportare” le sue dichiarazioni, le sue considerazioni, le sue iniziative oltre le porte dell’aula parlamentare.*

[...]

*Dunque, se si fa riferimento alla costante lettura che di tali norme ha dato la Corte Costituzionale, si giunge agevolmente alla conclusion che non vi e’ altra interpretazione possibile, al di fuori di quella che vuole sia tutelata la funzione politica del parlamentare, non la persona dell’“onorevole”; in realta’, solo in tale ottica ha senso il criterio ermeneutico che pretende la ricerca del “nesso funzionale” tra attivita’ parlamentare e dichiarazione denigratoria **extra moenia**.*

[...]

²³ C. Cost., sent. 321/2000

*La problematica relativa alla ricerca di un difficile equilibrio tra la liberta' di espressione del parlamentare e la tutela del cittadino "aggredito" e' certo non sconosciuta a Strasburgo: la Corte ha sempre spiegato che le limitazioni alla liberta' di espressione devono essere interpretate, appunto, in maniera "ristretta", al fine di non svuotare il valore che la liberta' di espressione riveste all'interno di una societa'; ma contemporaneamente, cio' non deve (non dovrebbe) tradursi nel diniego di "accesso" a un giudice terzo e imparziale, da parte di chi si senta diffamato. La potenziale tensione tra il dettato dell'art. 6 (diritto a un processo equo) e quello dell'art. 10 della convenzione (liberta' di espressione), applicato alle dichiarazioni del parlamentare dovrebbe trovare soluzione nel rapporto di proporzionalita' con le finalita' servite dall'istituto della immunita' parlamentare. E la proporzione, per la Corte europea, non sussiste qualora l'immunita' sia concessa per coprire dichiarazioni non aventi un legame diretto con l'attivita' politica e parlamentare di un membro del parlamento e la parte che si ritiene lesa non abbia una possibilita' chiara e concreta di far valere le proprie ragioni presso un giudice terzo e imparziale. Cio' che piu' conta: non si puo' ritenere che tale possibilita' sia realizzata qualora dipenda dalla facolta' del giudice a quo di sollevare conflitto presso la Corte Costituzionale"*²⁴

Fid-decizjoni tal-Qorti tal-Appell – Onor. Dr Joseph M Fenech vs Louis Cauchi et. tas-16 ta' Jannar 2002 jinghad:

"Il-kritika hi fundamentali f'socjeta' demokratika, pero' dejjem hemm il-limiti. Dawn il-limiti f'kazijiet bhal dan li jkunu ta' interess pubbliku generali, ghandhom ikunu wesghin kemm jista' jkun, b'mod partikolari meta hemm involuti persuni pubblici bhal ma huwa l-attur. F'dan ir-rigward il-Gately (op.cit.) jghid – In cases of comment on a matter of public interest the limits of comment are very wide indeed. This is especially so in the case of public men. Il-Gately jispecifica inoltre illi – Unless there is some clear evidence of malice or some mistatement of

²⁴ Patrono vs Italia, 2004; Osman vs Regno Unito, 2008; Esposito vs Italia, 2007; Cordova vs Italia, 2003; Dichand vs Austria e Lopez Gonzales vs Portogallo, 2000.

fact, no action should be commenced, however severe the terms of the criticism may be. Ghar-rigward ta' x'jikkostitwixxi mistatement of fact l-istess Gately ighid – It is one thing to comment upon or criticise, even with severity, the acknowledged or proved acts of a public man, and quite another to assert that he has been guilty of particular acts of misconduct.”

Azzjonijiet li jitnisslu minn reati tal-Istampa

L-Att dwar l-Istampa (Kap. 248) jipprovdi ghal azzjonijiet li jitnisslu minn reati tal-Istampa. Il-Qorti tqis iktar kien jaghmel sens li l-azzjoni li kellu jiehu l-kwerelant la hass li kellu jilmenta minn dak li qal l-imputat fil-Konferenza tal-Ahbarijiet tal-24 ta' Gunju 2015 kellha titmexxa skont l-Artikolu 24A tal-Att dwar l-Istampa li jipprovdi li azzjonijiet kriminali u civili jistghu jittiehdu *“kontra kull persuna li tkun għamlet diskors pubbliku f'cirkostanzi fejn hija tkun taf jew ragonevolment setgħet tkun taf jew tistenna li l-kontenut tiegħu se jigi pubblikat f'gazzetta jew f'mezz tax-xandir u fil-fatt ikun kollu jew parti minnu hekk ippubblikat.*

L-Artikoli 23, 24 u 24A jipprovdu li:

23. L-azzjoni kriminali għal xi reat taħt it-Taqsima II u l-azzjoni civili taħt it-Taqsima III ta' dan l-Att tista' tittiehed kontra kull waħda minn dawn il-persuni li gejjin:

(a) l-awtur tal-kitba, jekk huwa jkun kitibha sabiex tigi ppublikata, jew jekk ikun ta l-kunsens tiegħu għal hekk;

(b) l-EDITOR;

jew, jekk daww il-persuni ma jkunux jistghu jigu identifikati,

(c) ir-responsabbli għall-pubblikazzjoni.

24. Ebda waħda mill-persuni msemmija fl-aħħar artikolu qabel dan ma tista' tippoġva, b'difiza tagħha, li l-kitba hija kopja, jew estratt, jew sommarju, jew traduzzjoni ta' kitba oħra li digà giet stampata jew pubblikata xort'oħra.

24A. L-azzjonijiet kriminali u civili msemmija fl-artikolu 23 jistgħu jittieħdu wkoll kontra kull persuna li tkun għamlet diskors pubbliku f'cirkostanzi fejn hija tkun taf jew ragonevolment setgħet tkun taf jew tistenna li l-kontenut tiegħu se jigi publikat f'gazzetta jew f'mezz tax-xandir u fil-fatt ikun kollu jew parti minnu hekk ippublikat. (enfazi ta' din il-Qorti)

Il-legislatur fl-1996 haseb għal sitwazzjonijiet bħal dik li kien fiha l-imputat meta ta l-Konferenza tal-Ahbarijiet.

Il-Legislatur hass li kellu jdahhal dan l-artikolu fil-Ligi tal-Istampa wara pressjoni li għamel il-Press Club illum l-Istitut tal-Gurnalisti Maltin (IGM). Sa kemm saret din l-emenda kien hemm drabi fejn min hass li kellu jiehu azzjoni legali beda jagħmel dan kontra l-gurnalist li jkun qieghed jirraporta u mhux kontra min ikun qal dak id-diskors.

Wara din l-emenda l-gurnalist gie f'pozizzjoni privileggjata li meta jirrapporta lill-politiku f'manifestazzjoni jew okkazzjoni bħal Konferenza tal-Ahbarijiet seta' jinvoka quddiem il-Qrati dan il-privilegg bħala difiza għal dak minnu ppubblikat.

L-art. 12A tal-Ligi tal-Istampa, mdahhal gdid bl-Att imsemmi, jgħid kif gej:

Fi proceduri mehuda in forza ta' dan l-Att tkun difiza għall-editur jew għar-responsabbli għall-pubblikazzjoni li jippoġva li l-informazzjoni pubblikata kienet tikkonsisti f'rapport preciz ta' diskors li sar f'avveniment pubbliku importanti minn persuna identifikata u li kienet taf jew ragonevolment setgħet tkun taf jew tistenna li l-kontenut ta'

dak id-diskors se jigi pubblikat f'gazzetta jew f'mezz tax-xandir, u li l-pubblikazzjoni ta' l-istess diskors kienet ragonevolment gustifikabbli f'socjeta' demokratika.

Id-difiza tal-privilegg kwalifikat *gives immunity from libel actions when newspapers can prove a "duty to publish" articles which the public has a "right to know"*.

Fil-Qrati Inglizi dina d-difiza hija maghrufa bhala r-**Reynolds defence**²⁵ u li tikkonsisti li:

"in certain circumstances journalists can report allegations of a serious nature without having to prove that they are true. It offers newspapers, within closely circumscribed limits, immunity from libel actions provided they acted responsibly and in good faith and publications was in the public interest."

Ghalhekk, apparti l-kundizzjonijiet imsemmija fil-ligi, f'kazijiet bhal dawn il-Qorti trid tezamina jekk il-publikazzjoni kinitx fl-interess pubbliku u jekk kienx hemm hazen. L-espozizzjoni klassika ta' x'inhu 'malice' f'dan il-kuntest hija dik ta' Lord Diplock f'**Horrocks v Lowe**²⁶ fejn qalet li

"If the defendant used the occasion for some reason other than the reason for which the occasion was privileged he loses the privilege. Thus, the motive with which the statement was made is crucial. If desire to injure was the dominant motive the privilege is lost".

²⁵ Reynolds v Times Newspapers Ltd tat-28 ta' Ottubru 1999

²⁶ Harrocks v Lowe [1975] AC 135, [1974] 1 All ER 662

Ir-rwol tal-kontrollur ta' data personali

L-Att dwar il-Protezzjoni u l-Privatezza tad-Data (Kap 440) tal-Ligijiet ta' Malta) jipprovdi li:

"kontrollur ta' data personali" jew "kontrollur" tfisser persuna li waħedha jew solidalment ma' oħrajn tistabbilixxi l-għanijiet u l-mezzi tal-ipproċessar ta' data personali.

Il-Legislazzjoni Sussidjarja (440.05) **Regolamenti dwar il-Protezzjoni u l-Privatezza tad-Data (Processar ta' data fis-settur tal-pulizija)** f'Artikolu 2 wiehed isib it-tifsira ta' "kontrollur" bhala li tfisser il-Kummissarju tal-Pulizija jew ir-rapprezentant tieghu, jew kwalunkwe kap ta' awtorita' pubblika jew korp li qed jezercita poteri ta' pulizija jew ir-rapprezentanti tieghu.

L-*Information and Data Protection Commissioner* s-Sur Saviour Cachia fid-dokument esebit minnu waqt ix-xieħda tieghu u mmarkat bhala **Dok SC 2** (a fol. 25 et seq.) fl-atti jispjega li:

... any decision issued by this Office is taken following the necessary investigation process which is generally designed to establish all the facts surrounding the alleged data protection breach. In terms of my powers under the Act, an investigation is conducted on the data controller who at the time of such investigation determines, alone or jointly with other persons, the means and purposes of processing personal data and is ultimately legally responsible for all the processing operations, irrespective of who commits the violation within the establishment of the data controller, and also irrespective of the period when the alleged violation occurred. My decisions always make reference to the role of data controller rather than to individual identifiable person.

[...]

... it is clear that my decision has, in no part thereof, made reference to any identifiable person who might have disclosed, in an unauthorised manner, the personal data pertaining to the data subject in question and, consequently leading to a breach of the provisions of the Act. The issue of evidence about the person who had actually committed the unauthorised disclosure did not arise given that the ultimate responsibility, as highlighted above, must always be assumed by the data controller.

L-Information and Data Protection Commissioner fid-decizjoni tieghu tat-18 ta' Gunju, 2015 (**Dok SC 1**) jispjega r-responsabilta' li ghandu d-data controller (*a fol 19 et seq.*):

... the data controller has specific legal obligations in the conduct of its business operations, in particular, to ensure that any personal data is processed in accordance with the criteria established under article 9 of the Act and to implement the necessary organisational and technical security safeguards to protect personal data against any unlawful forms of processing

[...]

... the data controller's responsibility shall be to process any personal data in the carrying out of his functions in a fair and lawful manner without infringing in an outright manner, the data subject's fundamental right to privacy and data protection, a right the data controller is in duty bound to safeguard at all times.

Il-files tal-Korp tal-Pulizija

Mhux il-kompitu ta' din il-Qorti u lanqas hi mitluba biex tibdel ir-rwol taghha ta' Gudikatura Kriminali li tinvestiga u tistabbilixxi min kienet il-persuna li harget id-dokumenti mid-*dossier* tal-Ispettur Elton Taliana u

esebiti mix-xhud Saviour Balzan f'wahda mill-kawzi ta' libel quddiem Qorti ohra u li wasslu ghall-ilment quddiem il-Kummissarju tad-Data. Dawn id-dokumenti kienu esebiti f'dawn l-atti mill-istess xhud.

Dawn il-proceduri mhumiex xi wahda mill-kawzi ta' libell civili li fetah l-Ispettur Elton Taliana li saret referenza ghalihom f'din il-procedura, lanqas huwa process dwar il-karriera tal-istess Spettur u konnessjonijiet li kien allegat li kellu.

Li rrizulta f'dawn l-atti hu li l-Kummissarju tad-Data Saviour Cachia ikkundanna lill-Kummissarju tal-Pulizija bhala l-*controller* u dan ghaliex mill-Korp tal-Pulizija kien hemm *breach* meta mill-*file* maghruf bhala *dossier* hargu dokumenti li huma intenzjonati biss ghal konsum intern.

Il-Kummissarju tad-Data ma sabx lil Peter Paul Zammit hati li kien hu li ghadda d-dokumenti esebiti fil-Qorti.

Ix-xhud **Saviour Cachia** (a fol. 6 et seq.) sostna:

Fid-decizjoni tieghi ma ghidtx li s-Sur Zammit hareg il-*file*. Jiena jigifieri allura hawnhekk irreferejtu ghal dik il-parti fejn qed jissemma' hu bhala *data controller* fejn hemm indikat illi kien hemm xhieda fejn kienet qalet illi s-Sur Zammit, dak iz-zmien bhala Kummissarju tal-Pulizija kien talab il-*file* u kien jigifieri qieghed l-ufficju tieghu. U naturalment peress li ahna - ghax ahna importanti li wiehed jghid illi meta ninvestigaw ahna, ahna ninvestigaw il-processi meta jkun hemm dak l-allegat, l-allegazzjoni ta' *breach* ta' *data protection* - ahna dejjem inharsu lejn il-processi biex naraw kif qieghed il-process - qatt ma ninvestigaw in-nies. U fejn nikkonfermaw ahna illi kien hemm allura *breach*, *once* li nikkonfermaw dak iktar u iktar ma nkomplux infittxu min huma n-nies, allura ahna meta wasalna f'dak l-istadju, ghalhekk id-decizjoni qieghda kif inhija, ahna ma nkomplux nghidu, isma', harigha t-tali u t-tali. Allura dik hawnhekk tajna spjegazzjoni fejn

irreferejna illi allura x'qeghdin nghidu fid-decizjoni. Issa barra minn hekk, forsi hawnhekk m'hawnx riferenza ukoll, anke fl-istess decizjoni minghalija f'wahda mill-*considerations* hemm illi ma kienx hemm evidenza illi fil-fatt kien hemm *who disclosed the data*. Allura speci ahna konna morna naraw il-process u hareg li hareg.

Il-kundanna saret fi zmien meta l-Korp kien qieghed jitmexxa minn haddiehor.

Irrid nghid ukoll illi ahna meta nitkellmu fuq *data controller* – ghax din hija importanti *from a data protection point of view* – ahna *data controller* meta ninvestigaw anke jekk il-kaz ikun gara hafna zmien qabel, ahna ninvestigaw id-*data controller* min ikun f'dak il-mument, jigifieri jekk bhalissa hemm il-Kummissarju Cassar biex niftehmu, is-Sur Cassar, allura jiena qed ninvestiga lilu, u anke meta jkun hemm *data protection breaches* ikun irid igorrha d-*data controller* prezenti; ahna mhux fuq in-nies min kien f'dak iz-zmien, ghax dan huwa punt importanti hafna. Ghalhekk ahna bhala *data protection authorities* ninvestigaw relazzjoni taghna hija dejjem tkun mal-kontrolluri, dak li jissejjah il-kontrolluri tad-data.

Il-Qorti tinnota li ma ngabitx prova meta l-pagni mid-*dossier* esebiti ttiehdu mid-*dossier* u ahseb u ara min hadhom u ghaddihom lill-*Malta Today* u meta.

Il-*Human Resources file* koncernanti l-membri tal-Korp tal-Pulizija huwa *dossier* amministrattiv intern tal-Korp tal-Pulizija u li fih dokumenti u informazzjoni kunfidenzjali ferm fosthom rakkomandazzjonijiet u korrispondenza interna rigwardanti l-membri kif ukoll konsultazzjonijiet u deliberazzjonijiet strettament kunfidenzjali li jkunu saru fil-kors tal-operat tal-Awtorita' Pubblika;

Bis-sahha tad-dispozizzjonijiet tal-Artikolu 36 tal-Kap 496 tal-Ligijiet ta' Malta (Liberta' tal-Infommazzjoni), jezenta lill-Awtorita' Pubblika milli

tizvela *working files* interni ta' natura amministrattiva fejn *inter alia* jkun fih opinjonijiet, pariri u rakkomandazzjonijiet.

Il-Qorti taghmel referenza ghall-Artikolu 637(3)(a) tal-Kap 12 tal-Liġijiet ta' Malta (Kodiċi ta' Organizazzjoni u Proċedura Ċivili), li speċifikament jipprojbixxi mhux biss li tali dokument jiġi eżebit il-Qorti, iżda anke li ssir talba f'dak ir-rigward.

L-Artikolu 534AF tal-Kap 9 tal-Liġijiet ta' Malta, li dahal fis-sehh ridentement u li jitratta dwar *disclosure* ta' provi kontra jew favur imputat jew aħjar 'Dritt għal aċċess għall-materjal tal-każ', l-Liġi titkellem fuq 'dokumenti' u 'evidenza materjali' li għandhom ikunu għad-dispożizzjoni tal-persuna akkużata u/jew lill-avukat tiegħu. Għalhekk il-leġislatur kien kawt ħafna fir-rigward ta' liema dokumenti u evidenza għandhom jiġu mgħoddija lill-persuna arrestata. Huwa ċar li *working files* interni kif ukoll dokumenti/materjal amministrattiv ma jaqax fil-parametri ta' din id-dispożizzjoni

Infatti l-Artikolu 534AF (1) jitkellem dwar kull dokument fil-pussess tal-Pulizija li huwa relatat mal-każ speċifiku u li huwa essenzjali sabiex issir rikruża effettiva tal-legalita' tal-arrest jew tad-detenzjoni, filwaqt li isubartikolu (2) tal-istess Artikolu jipprefiggi li akkużat għandu jkollu aċċess għall evidenza materjali kollha li tinsab fil-pussess tal-Pulizija, kemm dik kontra kif ukoll dik favur l-akkużat. Illi l-*Personal File* ta' ufficjal tal-Pulizija jkun fih materjal rigward korrisondenza interna, pariri, minuti interni u dokumenti kunfidenzjali oħra kif spjegat fil-paragrafi preċedenti, dejjem ta' natura strettament interna ta' *human resources* u ċertament li ma jkun fih ebda evidenza materjali dwar każijiet speċifiċi.

Il-Qorti ma tllumx lill-gurnalist li fl-interess pubbliku jippubblika informazzjoni li tista' tinstab f'xi *file* minn dawn bil-konsegwenzi kollha li jista' jkun hemm, iżda l-pulizija huma obbligati bil-ligi li l-kontenut f'dawn il-files għandu jibqa' għal konsum intern, u jekk jirrizulta min

kien il-persuna li wettaq il-*breach* ikollu konsegwenzi serji hafna fosthom passi penali u anke dixxiplinarji.

Inghad dan kollu l-Qorti tinnota li fil-kaz **Guja v. Moldova**²⁷, il-Qorti Ewropea tad-Drittijiet tal-Bniedem irrikonoxxiet il-bzonn li tipprotegi l-*whistleblowers* u dan skont dak li jipprovdi Artikolu 10 tal-Konvenzjoni:

“that a civil servant, in the course of his work, may become aware of in-house information, including secret information, whose divulgation or publication corresponds to a strong public interest. The Court thus considers that the signalling by a civil servant or an employee in the public sector of illegal conduct or wrongdoing in the workplace should, in certain circumstances, enjoy protection. This may be called for where the employee or civil servant concerned is the only person, or part of a small category of persons, aware of what is happening at work and is thus best placed to act in the public interest by alerting the employer or the public at large.”

Fil-kaz **Voskuil v. Netherlands**²⁸ qalet:

“in a democratic state governed by the rule of law the use of improper methods by public authority is precisely the kind of issue about which the public has the right to be informed.”

U l-istess Qorti tkellmet dwar l-importanza li l-*media* tipprovdi **informazzjoni preciza u ta' min toqghod fuqha u l-importanza tal-protezzjoni tas-sors:**

²⁷ ECtHR Grand Chamber 12 February 2008, Case No. 14277/04, **Guja v. Moldova**. Il-Qorti rat ukoll ECtHR 5 October 2006, Case No. 14881/03, **Zakharov v. Russia**; ECtHR 26 July 2007, Case No. 64209/01, **Peev v. Bulgaria**; ECtHR 13 November 2008, Case Nos. 64119/00; 76292/01, ECtHR 16 December 2008, Case No. 53025/99, **Frankowicz v. Poland**; **Kayasu v. Turkey**; ECtHR 13 January 2009, Case No. 39656/03, **Ayhan Erdoğan v. Turkey**; ECtHR 19 February 2009, Case No. 4063/04, **Marchenko v. Ukraine** and ECtHR 26 February 2009, Case No. 29492/05, **Kudeshkina v. Russia**; ECtHR 16 July 2009, Case No. 20436/02, **Wojtas-Kaleta v. Poland**; ECtHR 31 maart 2011, Case No. 6428/07, **Siryk v. Ukraine**; ECtHR 21 July 2011, Case No. 28274/08, **Heinisch v. Germany** u ECtHR 18 October 2011, Case No. 10247/08, **Sosinowska v. Poland**.

²⁸ ECtHR 22 November 2007, Case No. 64752/01, **Voskuil v. Netherlands**

“protection of journalistic sources is one of the basic conditions for press freedom, as is recognised and reflected in various international instruments including the Committee of Ministers Recommendation (...). Without such protection, sources may be deterred from assisting the press in informing the public on matters of public interest. As a result the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information may be adversely affected. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society and the potentially chilling effect an order of source disclosure has on the exercise of that freedom, such a measure cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest.”²⁹

L-Organizzazzjoni Article 19 fil-qasam tal-liberta' tal-espressjoni tal-kelma dwar l-ufficcjali pubblici tghid:

Under no circumstances should defamation law provide any special protection for public officials, whatever their rank or status. This Principle embraces the manner in which complaints are lodged and processed, the standards which are applied in determining whether a defendant is liable, and the penalties which may be imposed.³⁰

KUNSIDERAZZJONIJIET LEGALI DWAR L-AKKUZA ODJERNA

Preliminari³¹

Din hija Qorti ta' Gudikatura Kriminali. Quddiemha persuna jew persuni jigu mixlija li wettqu reati kriminali. Il-Qorti hija adita bl-imputazzjonijiet li jingiebu quddiemha u li jkunu maghmula mill-

²⁹ ECtHR (Decision) 8 December 2005, Case No. 40485/02, **Nordisk Film & TV A/S v. Denmark** u ECtHR 31 May 2007, Case No. 40116/02, **Sečić v. Croatia**.

³⁰ **Defining Defamation**, *Principles on Freedom of Expression and Protection of Reputation*, Lulju 2000, pg. 11

³¹ Il-Qorti qeghda tibbaza dan fuq l-ispjega li ta l-kollega l-Magistrat Aaron Bugeja fil-kawza il-**Pulizija vs Joseph Calleja et. deciza fil-5 ta' Frar 2016**

prosekuzzjoni. Hemm limitu kemm il-Qorti tista' tkun flessibbli fir-rigward tal-interpretazzjoni tal-imputazzjonijiet li jingiebu quddiemha.

Ghalkemm verament li l-komparixxi li fuqha hemm l-imputazzjonijiet hija ritenuta bhala *un avviso a comparire*, l-imputazzjonijiet huma dejjem ta' indoli penali. Ir-regoli tal-procedura ma jistghux jigu interpretati b'mod wiesa' tali li l-parametri tal-azzjoni penali jigu spustati jew mibdula. Altrimenti d-difiza ma tkunx tista' tiddefendi ruhha kif jixraq. Quddiem din il-Qorti jekk persuna tinstab hatja tehel piena. Jekk ma tinstabx hatja tigi mehlusa mill-imputazzjonijiet dedotti. Il-valutazzjoni dwar jekk persuna tkunx hatja jew le tiddependi dejjem fuq il-provi li jingiebu quddiemha (u quddiem ebda post jew *medium* iehor) u l-istess valutazzjoni hija marbuta mal-imputazzjonijiet kriminali li jkunu gew miktuba u prezentati quddiemha mill-Pulizija Ezekuttiva jew skont kif ikunu gew mizjuda jew mibdula fl-istadju opportun - u dejjem mhux aktar tard minn meta l-Prosekuzzjoni tkun iddikjarat il-provi taghha maghluqa. Altrimenti jekk ma jkunx hekk l-akkuzatur ikun jista' jbidel il-parametri tal-azzjoni penali skont meta jidhirlu u skont l-andament ta' dak li jkun qed isehh jew li jkun irrizulta matul il-kors tal-process penali.

Ghalkemm hemm element ta' flessibilita' provdut minn certu giurisprudenza fir-rigward tal-procedimenti quddiem dawn il-Qrati ta' gurdizzjoni limitata, din il-flessibilita' trid tkun tali li ma tkunx ta' pregudizzju ghall-proceduri penali u ghad-drittijiet tad-difiza.

Is-setghat ta' din il-Qorti u r-rimedji li din il-Qorti tista' taghti f'kull kaz huma limitati u ristretti ghal dawk li huma previsti mil-Ligi u fil-Ligi. Din il-Qorti ma ghandiex is-setgha, ossia *carte blanche* li tiddeciedi kif trid u tipprovi kull rimedju li jidhirlha f'mohhha jew li trid jew li tkun tixtieq taghti. Il-provvedimenti taghha huma limitati ghal dawk provduti fil-Kodici Kriminali.

Din il-Qorti ma tistax tiehu post jew tissostitwixxi l-Qorti Civili kompetenti jew taghti rimedji ta' natura civili li mhumiex previsti mill-

Kodici Kriminali bhala li jistghu jigu emanati minn Qorti ta' Gudikatura Kriminali.

F'kull kaz pero, stante li din hija Qorti ta' Gudikatura Kriminali hija marbuta bit-termini tal-imputazzjoni skont kif spjegat aktar 'il fuq. Aktar minn hekk quddiemha huwa dmir tal-Prosekuzzjoni li tipprova l-kaz tagħha skont kif proferit fl-imputazzjoni kontestata sal-grad ta' konvinciment morali u sufficjenza probatorja lil hinn minn kull dubju dettat mir-raguni. Mill-banda l-oħra jekk id-difiza tagħzel li tressaq xi provi jew sottomissjonijiet kif sar f'dan il-kaz, huwa bizzejjed għad-difiza li tikkonvinci lil Qorti bit-tezi tagħha fuq bazi ta' konvinciment morali li jistrieħ fuq bilanc ta' probabilita' u f'kaz li dan isehh, u l-Qorti ma thossix moralment konvinta li l-Prosekuzzjoni laħqet il-grad ta' prova rikjesta minnha, allura l-Qorti trid tillibera lill-imputat.

Dawn huwa principji kardinali li jsawru l-procediment penali Malti. Jogħgbuna jew ma jogħgbuniex, dawn huma whud mir-regoli bazilari li jistrieħ fuqhom il-procediment penali Malti.

Biss din il-Qorti ma tistax tieqaf hawnhekk. Hija marbuta li tiggudika dan il-kaz skont l-akkuza li giet magħmula mill-Prosekuzzjoni wara l-kwerela tal-*parte civile* kontra l-imputat u ma tistax tbiddel hi bis-setgħa tagħha stess il-parametri tal-kawza intrapriża mill-Prosekuzzjoni u tiddeciedi kif jiftlilha jew tmur lil hinn mill-imputazzjoni prezentata lilha mill-Prosekuzzjoni.

Artikolu 252 (1) tal-Kap 9 tal-Ligijiet ta' Malta (Kodici Kriminali)

Il-Qorti tosserva illi l-proceduri odjerni, inbdew wara li kienet ipprezentata l-kwerela ta' Peter Paul Zammit fit-21 ta' Dicembru 2015 (immarkata bhala **Dok PPZ 1 a fol. 2**), li huwa l-bazi illi fuqha il-prosekuzzjoni mexxiet dan il-kaz.

L-artikolu 252 (1) tal-Kodici Kriminali jipprovdi li:

“Kull min, bil-ħsieb li jtellef jew inaqqas il-gieh ta’ xi hadd, iweggħu bi kliem, b’ġesti, b’kitba, b’disinji jew b’xi mod ieħor, jeħel, meta jinsab ħati, il-piena ta’ prigunerija għal żmien mhux aktar minn tliet xhur jew il-multa.”³²

Illi ma hemmx dubju li dan d-delitt jirrikjedi l-intenzjoni kriminuzza specifika ta’ min iwettaq dan ir-reat, tkun li bhala rizultat ta’ dak l-att kriminuz tieghu, tigi mnaqqsa jew imtelfa r-reputazzjoni jew gieh tal-hekk imsejjah offiz.

Dan l-artikolu, a differenza tal-ingurja, li hija diretta lejn persuna u ssir fil-presenza tagħha, għandu bhala l-iskop ewlieni tieghu, li jipprotegi l-gieh jew ir-reputazzjoni ta’ xi persuna fis-sens li dawn il-kwalitajiet ma jigux imnaqqsa jew danneggjati b’xi azzjoni li tkun intenzjonata jew voluta li twassal għal dak l-effett jew rizultat.

Fil-kawza l-**Pulizija v. Triza Grima**³³ deciza fid-29 ta’ Marzu, 2007 mill-Qorti tal-Appell Kriminali qalet li:

Illi ma hemmx dubju li l-ingurja kontemplata fl-artikolu 252 (1) tal-Kodici Kriminali trid tkun magħmula bil-ħsieb specifiku li dak li jkun inaqqas jew itellef il-gieh ta’ haddieħor. Hi dottrina pacifika li meta l-kliem ikunu manifestament ingurjuzi, tali intenzjoni specifika hija prezunta u jkun jinkombi fuq l-imputat jew akkuzat li jipprova (imqar fuq bazi ta’ probabbilta) li daww il-kliem ma qalhomx bil-ħsieb li joltraggja, izda b’ xi skop ieħor rikonoxxut mill-ligi li jinnewtralizzza l-

³² Verzjoni bl-Ingliż: Article 252. (1) “Whosoever, with the object of destroying or damaging the reputation of any person, shall offend such person by words, gestures, or by any writing or drawing, or in any other manner, shall, on conviction, be liable to imprisonment for a term not exceeding three months, or to a fine (*multa*).”

³³ Appell Nru. 407/06 deciz mill-Imhalled Joe Galea Debono wara s-sentenza tal-Qorti tal-Magistrati bhala Gudikatura Kriminali tal-kollega l-Magistrat Consuelo Scerri Herrera tas-6 ta’ Dicembru 2006.

“animus iniuriandi” (vide App. Krim. “Il-Pulizija vs. Joseph Gauci” [3.9.2001]; App. Krim. “Francesco Cascun vs. Rev. Sac. Charles Vella”[13.5.1961] u ohrajn).

Fil-kawza **l-Pulizija v. Joseph Gauci** deciza fit-3 ta' Settembru 2001, il-Qorti tal-Appell Kriminali qalet hekk:

*“... ma hemmx dubju li l-ingurja kontemplata fl- Artikolu 252(1) tal-Kodici Kriminali trid tkun maghmula bil-hsieb specifiku li dak li jkun inaqas jew itellef il-gieh ta' haddiehor. Hi dottrina pacifika li meta l-kliem (jew atti, kitba, disinji, ecc.) ikunu manifestament ingurjuzi, tali intenzjoni specifika hi presunta, u jkun jinkombi fuq l-imputat jew akkuzat li jipprova (imqar fuq bazi ta' probabilita`) li daww il- kliem ma qalhomx bil-hsieb li joltraggja, izda b'xi skop iehor rikonoxxut mil-ligi li jinnewtralizza l-animus injuriandi. Hekk, per ezempju, jekk il-kliem in kwistjoni jkunu ntqalu animus corrigendi, jew animus consulendi, jew animus jocandi ma jistax jinghad li hemm ir-reat kontemplat fl-Artikolu 252(1) tal-Kodici Kriminali (ghalkemm fil-kaz ta' kliem li jinghad animus jocandi jista' jkollok, fil-ligi taghna, l-ingurja kontemplata fl-Artikolu 339(1)(e)). L-istess jista' jinghad jekk persuna tkun ragjonevolment tahseb li sar reat (kontriha jew fil-konfront ta' haddiehor) jew, anke jekk il-fatt ma jammontax ghal reat, jekk tkun ragjonevolment tahseb li qed issir xi haga li tista' tkun ta' hsara ghalha jew ghal terzi, tista' tiddenunzja dak il-fatt lill-awtorita` kompetenti bla ma tinkorri fir-reat ta' ingurja. Kif gie mfisser mill-Qorti Kriminali fis-sentenza fil-kawza fl-ismijiet **Emmanuele Baldacchino v. Stella Abela et** (Appell Kriminali, 6 ta' Dicembru 1948):*

'... hu principju sancit mill-gurisprudenza illi jekk persuna, ghal ragunijiet tajba, tkun gustifikata illi tahseb ragjonevolment, u mhux bla motiv gust, illi haddiehor ghamel reat ghad-dannu taghha, u timputalu dan ir-reat, allura b'daqshekk ma hix soggetta ghal proceduri ghall-ingurja. Izda hi kondizzjoni, fost ohrajn, ta' l-applikabilita` ta' dan il- principju illi l-imputazzjoni ghandha ssir bl-anqas pubblicita`

possibbli. Jekk, b'kumbinazzjoni, meta ssir l-imputazzjoni jkun hemm xi hadd prezenti, b'daqshekk il-privilegg ma jintilifx necessarjament, basta li jirrizulta li l-imputazzjoni ma gietx komunikata lil persuni ohra 'avvicinati bla bzonni'.

Fuq dan il-punt il-gurista Taljan **Francesco Antolisei** jghid:

“Per la consumazione del reato di diffamazione, e' necessario che l'espressione offensiva pervenga a conoscenza di un' altra persona e sia da altri percepita.”

Il-Qorti Kriminali preseduta mill-Imhalled William Harding, fis-sentenza fl-ismijiet **Il-Pulizija vs Emmanuele Cassar**³⁴, deciza fit-12 ta' Dicembru, 1936 intqal li:

*"Inoltre hemm bzonni li l-kliem (jew gesti, kitba, disinji, ecc.) ikunu fil-fatt ingurjuzi, kif ukoll hemm bzonni l-elementi formali li jikkonsisti fl-intenzjoni li wiehed joffendi ... Hemm kazijiet li fihom l-element morali (formali), cjo' dana l-**animus injuriandi**, jigi presunt, u dana jsir meta l-kliem ikunu per se ingurjuzi u tali li wiehed ghandu ragonevolment jirritjeni, fl-assenza ta' prova in kuntrarju, li ntqalu bil-hsieb li l-persuna li ghalha dawk il-kliem kienu diretti tkun ingurjata, cjo' bil-hsieb li jintilef jew jitnaqqas il-gieh ta' dik il-persuna. Jekk, pero', il-kliem ma jkunx per se u mad-daqqa t'ghajn ingurjuz, trid issir indagni biex wiehed jistabilixxi jekk il-prosekuzzjoni ppruvatx sal-grad li trid il-ligi f'materja penali li dawk il-kliem intqalu f'cirkostanzi u b'tali mod li kienu ingurjuzi ghall-persuna li lilha kienu diretti u ntqalu mill-agent bl-intenzjoni li joffendu. Fi kliem iehor, anke jekk il-kliem ikun per se u mad-daqqa t'ghajn ingurjuz, jista' jaghti l-kaz li jkunnu ntqalu mhux bl-intenzjoni li joffendu izda, per ezempju, b'cajta (**animus jocandi**) jew filwaqt li l-agent ikun legittimament jipprotesta kontra xi agir partikolari (**animus reclamandi**). Ghalhekk jekk il-*

³⁴ Kollez. Drciz. Vol. XXIX.IV.593 liema decizjoni kienet ikkwotata mill-Imhalled Vincent DeGaetano fid-decizjoni **Il-Pulizija vs Amante Camilleri** fis-17 ta' Ottubru 1997.

*Qorti tkun sodisfatta li l-hsieb ta' l-agent ma kienx li jingurja izda li jaghmel rimostranza, jigi nieqes dan ir-reat. Tali protesta, izda, certament ghandha l-limiti taghha: il-kliem li jinghad u specjalment il-mod kif jinghad ghandu jkun limitat sabiex titwassal dik il-protesta, b'mod ghalhekk li f'kaz ta' excess ma jkunx jista' jibbenefika mid-difiza li dak il-kliem ikun intqal **animus reclamandi**."*

KONKLUZZJONIJIET

1. La l-kwerelant u lanqas il-pulizija ma pprezentaw traskrizzjoni tad-*dvd's* li pprezentaw fl-atti u li juru l-konferenza tal-ahbarijiet tal-imputat. Il-Qorti ordnat li jsir dan sabiex hija tkun taf fuq x'hiex huwa mibni dan il-kaz.
2. Tul is-smigh tal-kaz il-kwerelant naqas milli jindika lill-Qorti liema huma l-partijiet tal-konferenza tal-ahbarijiet li hu hassu malafamat bihom.
3. Bid-dovut rispett lejn il-kwerelant, il-Qorti ma tistax tifhem kif f'disa' xhur ma sabx il-hin li jittraskrivi l-kontenut tad-*dvd's* u jindika b'mod car dak li qieghed jilmenta minnu.
4. Il-Qorti tirrimarka wkoll li meta kwerelant jipprezenta kwerela bhala cittadin privat ghandu hu jipprezentalthom il-provi u mhux jitlobhom igibu *dvd's* minghand dak u minghand l-iehor (il-pulizija prezentaw *dvds* b'kontenut marbut mal-konferenza tal-ahbarijiet minghand il-*PBS* u *One*).
5. Il-pulizija jekk thoss li ma kienx hemm provi biex tinstab htija ma sserrahx il-kuxjenza taghha billi tghid li hadet parir minghand xi hadd fl-ufficcju tal-Avukat Generali li taha parir li tressaq. Il-pulizija la ma kinitx konvinta kellha tieqaf hemm u jekk il-kwerelant ihoss li l-kaz tieghu jitmexxa fil-Qorti ghandu l-ghodda

*tac-challenge*³⁵ bil-procedura msemmija fl-Artikolu 541 tal-Kodici Kriminali fejn tkun il-Qorti li tordna lill-Kummissarju tal-Pulizija jipprocedi.

6. Il-Qorti thoss li kif zviluppa dan il-kaz l-imputat ma kien se jitlef xejn li stenna li jkollu r-rapport ufficcjali tal-*Information and Data Protection Commissioner* l-ewwel biex jaghti Konferenza tal-Ahbarijiet dwaru.
7. L-imputat kif irrizulta bbaza l-argumenti tieghu fuq rapport ta' gurnal li t-titlu kien zbaljat u dan seta' anke zvija l-istess imputat fl-argumenti tieghu.
8. Li t-titlu tar-rapport li deher fit-*Times of Malta* fl-24 ta' Gunju 2015 ma kienx korrett kien rikonoxxut mid-direzzjoni editorjali tat-*Times* fejn l-ghada ghamlet kjarifika u skuzat ruhha mal-kwerelant.
9. Il-Qorti tinnota li ta' sikwit qieghed ikun hemm nuqqas fir-rapport dwar decizjonijiet inkluz ta' din il-Qorti u Qrati ohra, jew inkella f'rapporti mahruqa minn istituzzjonijiet varji. Ghandu jkun hemm aktar koperazzjoni bejn il-gurnalist u *s-sub editor* li hafna drabi jkun dan tal-ahhar li jaghzel it-titlu u mhux il-gurnalist li jkun kiteb l-artiklu originarjament.
10. Il-Qorti tinnota wkoll li gurnalist, ikun tajjeb kemm ikun biex jirraporta stejjer politici, ma jfissirx li jkollu esperjenza ta' rapurtagg ta' proceduri gudizzjarji.

³⁵ Il-Qorti tkun trid tiddetermina fuq bazi "*prima facie*" jekk hemmx lok ghalbiex in-*notitia criminis* li tkun saret lill-Pulizija tigi tradotta fil-konsegwenti azzjoni penali. L-iskop ta' dawn il-proceduri jkun li l-Qorti tal-Magistrati twettaq forma ta' "*judicial review*" fuq l-operat tal-Pulizija meta, fil-kazijiet kongruwi, ma tipprocedix bil-prosekuzzjoni penali minkejja n-*notitia criminis* maghamula lilha.

11. Il-Qorti tappella lill-edituri li jaraw li jinghata aktar tahrig lill-gurnalisti tagghom dwar *beats* differenti inkluz ir-rapurtagg mill-Qrati.
12. Il-Qorti tfakkar dak li jipprovdi l-Att dwar l-Istampa (Kap 248) f'Artikolu 33 fejn jindika meta ma tista' tittiehed ebda azzjoni dwar il-pubblikazzjonijiet ta' procedimenti f'qorti tal-gustizzja f'Malta **"kemm-il darba dawk ir-rapporti jkunu rapporti gusti tal-procedimenti"** (enfazi ta' din il-Qorti).

DECIDE:

Illi wara li l-Qorti gharblet fit-tul, hi tal-fehma li ma kienx hemm l-*animus injuriandi* rikjest mill-ligi ghall-ezistenza tar-reat li bih jinsab mixli l-imputat.

Il-Qorti ghalhekk wara li rat l-artikolu tal-Ligi u cioe` l-artikolu 252(1) tal-Kap 9 tal-Ligijiet ta' Malta tiddecidi li ma ssibx lill-imputat Dr. Jason Azzopardi LL.D. hati tal-akkuza kif addebitata fil-konfront tieghu u tilliberah minnha.

Ft./Dr. Joseph Mifsud
Magistrat

Vera Kopja

Margaret De Battista
Deputat Registratur